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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10532 (E)

1. The International Federation of Human Rights (FIDH) and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ) believe that issues of justice, rights and fairness are at the heart of the conflict in Northern Ireland and must therefore be central to efforts to resolve it. We believe the establishment of the rule of law and protection for human rights are vital to this task.

2. Accordingly we very much welcome the Good Friday Agreement of April 1998. The Agreement gave institutional expression to the need to protect rights by providing for a new human rights commission, a commission on policing and a review of the criminal justice system. In addition the Agreement placed an obligation on government to promote equality of opportunity.

3. The Agreement makes regular reference to the importance of international human rights standards. It is therefore vital that the United Kingdom comply with those standards by, inter alia, implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers in his report on Northern Ireland, which was presented to the Commission last year, and the recommendations of the Committee against Torture in November 1998. Additionally we urge action to remedy a number of outstanding human rights concerns, many of which have been the subject of previous comment in the Human Rights Committee (1991 and 1995), the Committee against Torture (1991 and 1995), the Commission on Human Rights (1993, 1994 and 1996), the Sub-Commission (1992, 1993, 1994 and 1996) and the European Committee for the Prevention of Torture (1994) and have been the cause of several adverse findings against the United Kingdom in the European Court of Human Rights.

4. Regrettably the Government of the United Kingdom has failed to respond adequately to these concerns.

Report of the Special Rapporteur on the independence of judges and lawyers

5. FIDH and CAJ have previously expressed concern at the continuing allegations that some police officers threaten and abuse lawyers via their clients in a manner entirely inconsistent with the Basic Principles on the Role of Lawyers. We had also expressed concern that the killing of prominent defence lawyer Patrick Finucane amidst concerns of official collusion remained unresolved.

6. The serious nature of these concerns was such as to persuade the Special Rapporteur on the independence of judges and lawyers to conduct an on-site investigation in October 1997.

7. In April 1998 the Special Rapporteur presented his findings to the Commission on Human Rights. He concluded that police officers in Northern Ireland had engaged in systematic abuse of defence lawyers. He said that there should be an independent judicial inquiry into the murder of Patrick Finucane to resolve the outstanding questions of official involvement

in his murder. We support these conclusions and the view of the Special Rapporteur that respect for the rule of law and human rights enhances the prospects for a peaceful resolution of the conflict in Northern Ireland.

8. The Special Rapporteur also made a number of other important recommendations in section VIII of his report. We endorse them all, and in particular urge the Government of the United Kingdom to take immediate action in order to bring about:

An end to deferral of access to legal advice for those held under emergency laws;

The introduction of legislation to give suspects the right to have a solicitor present during all police interviews;

The immediate restoration of the right to remain silent under police questioning and to refrain from testifying in self-defence without adverse inferences being drawn from such silence;

The extension of the PACE standard for the admissibility of confession evidence to all cases;

The restoration of the right to trial by jury;

An end to the practice of closed prison visits in England and Wales;

The exemption of lawyers' offices from official surveillance; and

Training on international human rights laws and norms for the judiciary and the police.

9. We note that in its official response to the Special Rapporteur's report the Government of the United Kingdom, although it welcomed the report, did not make a single proposal for any new action in order to implement its recommendations. We were profoundly disappointed by this lack of any positive response and hope that on reflection the Government will give serious consideration to the grave issues raised in the Special Rapporteur's report and will draw up specific plans for implementing his proposals urgently.

Committee against Torture

10. FIDH and CAJ also welcome the conclusions and recommendations of the Committee against Torture in relation to the United Kingdom, issued on 19 November 1998. While welcoming the peace process, the Committee identified the continuation of the state of emergency in Northern Ireland as the sole factor impeding the application of the Convention against Torture in the United Kingdom. In this regard FIDH and CAJ are concerned that the United Kingdom continues to derogate from the International Covenant on Civil and Political Rights and from the European Convention in respect of the powers which allow for seven-day detention without being brought before a court. The continuing derogations are in spite of a massive reduction in the level of the

security threat and ceasefires by the main paramilitary groups. Indeed FIDH and CAJ are particularly concerned at an increase in the use of extended detention under the emergency legislation in the third quarter of 1998 (the last for which figures are available) when 156 people were detained under the Prevention of Terrorism Act in Northern Ireland; 26 individuals were held for more than the permissible time prescribed by the European Court of Human Rights (Brogan v. UK); 17 were held for more than six days and 13 of that number were released without charge.

11. The Committee against Torture also expressed its concern at the rules of evidence in Northern Ireland, which admit confessions of suspected paramilitaries at a lower test than in ordinary criminal cases. The Committee called for the closure of the detention centres and particularly Castlereagh at the earliest opportunity. In addition the Committee recommended the reconstruction of the Royal Ulster Constabulary so that "it more closely represents the cultural realities of Northern Ireland". It was suggested that this should be combined with an extensive programme of re-education for officers.

12. FIDH and CAJ believe it is vital that the Government respond positively to the recommendations of the Committee against Torture. As the Committee said, there are no exceptional circumstances which "can ever provide a justification for failure to comply with the Convention [against Torture]". We believe that the continued existence and application of emergency laws will inevitably result in more violations of the United Kingdom's international human rights obligations. Our concern has been heightened by the passing of new and more extensive emergency legislation following the horrific Omagh bombing in August 1998. The Criminal Justice (Terrorism and Conspiracy) Act allows for the opinion of a senior police officer to be admitted as evidence that an individual is a member of an illegal organization. This "evidence" combined with the silence of the accused may be sufficient to secure a conviction.

13. The Government recently published a consultation paper on counter-terrorist legislation. It appears that the intention is to replace the current legislation with one piece of permanent legislation to cover the whole of the United Kingdom, with the possibility of additional powers in Northern Ireland. It appears that this will amount to an entrenchment of current emergency powers which will not comply with the Government's international human rights standards.

14. The Committee against Torture also called for the abolition of plastic bullets as a means of riot control. We strongly endorse this recommendation: 837 plastic bullets were fired in eight days between 4 July and 14 July 1998. No deaths occurred, but several serious injuries were sustained, including by one young woman who lost her eye. Extensive upper body injuries were recorded, despite the fact that the guidelines require that the lower body should be targeted. FIDH and CAJ believe that plastic bullets are lethal weapons which pose an unacceptable threat to life. We respectfully request the Commission to urge the United Kingdom to comply with the recommendation of the Committee against Torture and withdraw this weapon from use.

Conclusion

15. FIDH and CAJ believe that the cornerstone for a peaceful and democratic society must be respect for the rule of law. We believe it is essential, if lasting peace is to be established in Northern Ireland, that the Government of the United Kingdom act immediately on the recommendations of the Special Rapporteur of the independence of judges and lawyers, Mr. Cumaraswamy. Additionally, the Government should swiftly implement the recommendations of the Committee against Torture (1995 and 1998) and those of the Human Rights Committee (1995) and dismantle the apparatus of emergency laws currently operating in Northern Ireland. We respectfully request the Commission to urge the Government of the United Kingdom to comply immediately with its international human rights obligations in this regard.